

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 08-13555 (JMP)
4 - - - - - x
5 In the Matter of:
6 LEHMAN BROTHERS HOLDINGS, INC., et al.,
7 Debtors.
8 - - - - - x
9 CASE NO.: 08-01420 (JMP) (SIPA)
10 In the Matter of:
11 LEHMAN BROTHERS, INC.,
12 Debtor.
13 - - - - - x
14 CASE NO.: 12-10063
15 In the Matter of:
16 LEHMAN BROTHERS AUSTRALIA, LTD.,
17 Debtors.
18 - - - - - x
19 CASE NO.: 12-01220
20 WILLIAMS-PATE,
21 Plaintiff,
22 v.
23 LEHMAN BROTHERS HOLDINGS, INC., et al.,
24 Defendants.
25 - - - - - x

1 - - - - - x

2 CASE NO.: 10-03544

3 LEHMAN BROTHERS FINANCIL PRODUCTS, INC.,

4 Plaintiff,

5 v.

6 THE BANK OF NEW YORK MELLON TRUST CO., NATIONAL ASSOCIATION,

7 Defendants.

8 - - - - - x

9 CASE NO.: 10-03266

10 LEHMAN BROTHERS HOLDINGS, INC.,

11 Plaintiff,

12 v.

13 JPMORGAN CHASE BANK, N.A.,

14 Defendants.

15 - - - - - x

16 United States Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 March 13, 2013

21 10:04 a.m.

22

23 B E F O R E :

24 HON JAMES M. PECK

25 U.S. BANKRUPTCY JUDGE

1 Presentment of Revised Order Authorizing Debtors to Assume
2 Certain Executory Contracts [ECF No. 34551]

3
4 Motion of FFI Fund, Ltd., et al. to Consolidate Contested
5 Matter with Adversary Proceeding and for Related Relief
6 [ECF No. 35519]

7
8 Motion for Entry of an Order Approving a Settlement
9 Agreement with Certain U.S. Insurers [ECF No. 22]

10
11 Williams-Pate v. LBHI, et al. [Adversary Proceeding
12 No. 12-01220] Motions to Dismiss

13
14 Lehman Brothers Financial Products, Inc. v. The Bank of New
15 York Mellon Trust Co., National Association [Adversary
16 Proceeding No. 10-03544] Presentment of Order Granting
17 Interpleader Relief

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1 LBHI v. JPMorgan Chase Bank, N.A. [Adversary Proceeding
2 No. 10-03266] Application of Plaintiffs Lehman Brothers
3 Holdings, Inc. and Official Committee of Unsecured Creditors
4 of Lehman Brothers Holdings, Inc., et al., Pursuant to 11
5 U.S.C. §105(a) and the Hague Convention on the Taking of
6 Evidence Abroad in Civil or Commercial Matters, for Issuance
7 of a Letter of Request for International Judicial Assistance
8 to Take the Sworn Deposition of Bruno Iksil.

9
10 Motion of Fidelity National Title Insurance Company to
11 Compel Compliance with Requirements of Title Insurance
12 Policies [ECF No. 11513]

13
14 Motion of Monti Family Holding Company, Ltd. for Leave to
15 Conduct Rule 2004 Discovery of Debtor Lehman Brothers
16 Holdings, Inc. and Other Entities [ECF No. 16803]

17
18 Cardinal Investment Sub I, L.P. and Oak Hill Strategic
19 Partners, L.P.'s Motion for Limited Intervention in the
20 Contested Matter Concerning the Trustee's Determination of
21 Certain Claims of Lehman Brothers Holdings, Inc., and
22 Certain of Its Affiliates [LBI ECF No. 4634]

1 Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019
2 for Entry of An Order Approving Settlement Agreement [LBI
3 ECF No. 5483]
4

5 Trustee's Twenty-Second Omnibus Objection to General
6 Creditor Claims (Amended and Suspended Claims) [LBI ECF
7 No. 5684]
8

9 Motion of FirstBank Puerto Rico for (1) Reconsideration,
10 Pursuant to Section 502(j) of the Bankruptcy Code and
11 Bankruptcy Rule 9024, of the SIPA Trustee's Denial of
12 FirstBank's Customer Claim, and (2) Limited Intervention,
13 Pursuant to Bankruptcy Rule 7024 and Local Bankruptcy Rule
14 9014-1, in the Contested Matter Concerning the Trustee's
15 Determination of Certain Claims of Lehman Brothers Holdings,
16 Inc. and Certain of Its Affiliates [LBI ECF No. 5197]
17

18 Motion of Elliott Management Corporation for an Order,
19 Pursuant to 15 U.S.C. §§ 78fff-1(B), 78fff-2(B), and 78fff-
20 2(C)(1) and 11 U.S.C. §105(A), (I) Determining the Method of
21 Distribution on Customer Claims and (II) Directing an
22 Initial Distribution on Allowed Customer Claims [LBI ECF No.
23 5129]
24

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1 P R O C E E D I N G S

2 THE COURT: Be seated. Good morning.

3 MR. BRYK: Good morning, Your Honor. Jordan Bryk,
4 Weil, Gotshal & Manges on behalf of Lehman Brothers
5 Holdings, Inc. and certain of its affiliates.

6 I'll start with the first item on the agenda,
7 which is uncontested: The presentment of a revised order
8 authorizing the debtors to assume certain executory
9 contracts. On February 8th, 2013, the debtors filed a
10 notice of presentment of order authorizing the debtors to
11 assume certain executory contracts. That's ECF Number
12 34508.

13 On February 11th, 2013, after making certain
14 revisions, the debtors filed a notice of presentment of
15 revised order authorizing the debtors to assume certain
16 executory contracts. And that's ECF 34551.

17 No objections to the February 11th notice of
18 presentment have been filed.

19 We have been in discussions with the trustee and
20 B.N.Y. Mellon with regard to three contracts listed on the
21 order. The debtors have recently decided not to pursue the
22 assumption of these three contracts at this time and have
23 consensually agreed with B.N.Y. Mellon to take them off of
24 the order. I have a mark-up with me of the new order
25 compared to the order that we filed on February 11th.

1 Your Honor, would you like to see a copy of the
2 mark-up?

3 THE COURT: Yes.

4 MR. BRYK: Permission to approach the bench.

5 THE COURT: Granted.

6 Thank you.

7 Now I assume that removing these three agreements
8 from the exhibit doesn't prejudice the debtors' ability to
9 reconsider that decision at some future date; is that
10 correct?

11 MR. BRYK: That's correct, Your Honor. The
12 debtors and B.N.Y. are working toward a consensual
13 resolution with regards to these three contracts.

14 THE COURT: Fine. This is unopposed and the order
15 will be entered.

16 Thank you.

17 MR. BRYK: Thank you, Your Honor.

18 And now I'll turn the podium over to the attorneys
19 who will be handling Item Number 2 on the agenda.

20 THE COURT: Okay.

21 MR. MARTIN: Good morning, Your Honor. Ross
22 Martin of Ropes & Gray here for FYI, Ltd., FFI Fund, Ltd.
23 and Oliphant Fund, Ltd. That's a little bit of a mouthful
24 so I'll call them the Bracebridge-Managed Funds. They've
25 filed claims in this case, about \$250 million or so.

1 We're here on a very limited issue -- procedural
2 issue today, Your Honor, to consolidate two pending disputes
3 in this court: One, an adversary that the estate has filed
4 against various city-related entities, and a claims
5 objection that has been filed and has been on hiatus with
6 respect to Bracebridge.

7 Your Honor, I'm not going to -- unless the Court
8 wants, I'm not going to propose to kind of go through all of
9 the details of the arguments. I think the pleadings mostly
10 speak for themselves and are relatively short. I would like
11 to hit a couple of points for emphasis, if I could, just to
12 -- having seen the back and forth between the parties to
13 kind of focus the issue.

14 I really see three things that are the core of the
15 estate's arguments against our consolidation.

16 The first is the notion that the Bracebridge-
17 Managed Funds are trying to jump the line somehow in the
18 claims process. And I don't think anything could be further
19 from the truth. One, Lehman has already instigated a claim
20 objection -- almost two years ago now -- and I understand
21 they have the right to put that on hiatus. But what has
22 happened here is that Lehman has brought the Bracebridge-
23 Managed Funds into a central role in another proceeding that
24 they have. They've instigated that. That's far different
25 from other creditors in the case.

1 And all we're doing is, rather than trying to jump
2 the line, is to say we want to do this in a coordinated
3 fashion in a litigation that's currently scheduled to last
4 until 2015. I can assure you my client doesn't see that as
5 jumping the line or moving it along.

6 THE COURT: But -- but let me understand
7 something. I don't mean to jump into your argument, but --

8 MR. MARTIN: No. That's perfectly fine, Your
9 Honor.

10 THE COURT: -- my understanding is that the
11 parties are probably going to be willing to have you
12 intervene or become a party to the adversary proceeding as
13 it relates to areas that overlap that involve the so-called
14 step-out transactions, as I have read that term in the
15 papers. But that everything else that relates to the claim
16 objection is essentially extraneous to that litigation
17 issue, if I'm understanding the positions properly.

18 So one of the things I'm not fully understanding
19 is why this isn't simply a consensual arrangement in which
20 issues that, in fact, are squarely within the adversary
21 proceeding involve you, and matters that are extraneous are
22 excluded. That seems to be an efficient way to deal with
23 it. But I -- I would like to hear why that doesn't work for
24 you.

25 MR. MARTIN: Well, I -- that's actually quite

1 simple, Your Honor, and I'll -- let me get some concrete
2 examples.

3 So we're going to get extensive document
4 production requests from the estate. We've gotten them in
5 the rubric of a 2004 exam and even prior to them filing
6 their amended complaint against Citi. And we're going to
7 have to go through for a -- what they term to be a
8 centerpiece of their action full electronic discovery,
9 talking to our clients, interviewing people, going through
10 all their email for some subset of what they asked for now.

11 We would strongly prefer the efficiency of doing
12 that once, understanding everything that Lehman wants. We
13 know what the universe of trades are. The events actually
14 all occur within a week or two of each other, both the
15 failed step-outs and the termination and pricing of the
16 trades. So we're not -- and otherwise what we're going to
17 face is having to go through the whole electronic discovery
18 process, having to go through depositions, taking days to
19 prepare our clients for depositions, and then do it again
20 later because no matter what we do to try to get everything
21 at once, the estate is likely to come up with additional
22 things they want later.

23 They're already doing discovery with respect to
24 all of these same kinds of things with Citi, all of Citi's
25 trades. Our trades almost certainly overlap the non-step-

1 out trades, the 300 names we -- you know, we have in total,
2 the non-step-out trades, almost certainly overlap with a
3 very large book Citi has.

4 So there is real cost to the client of, you know,
5 duplicative days. We -- I'm -- I can -- can't be certain,
6 Your Honor, but my guess is when you have two stages of
7 discovery like that, we'll be back later, if we don't do it
8 at once, with disputes where the estate is saying we want to
9 depose someone again and we're saying it's burdensome
10 because you should have done it the first time, or it's --
11 you know, it's -- we think it's clear that it doesn't have
12 to be done again. If we do it at once, it's efficient for
13 us. It's efficient for the estate and, frankly, it's
14 efficient for the Court.

15 And it's really no significant burden to them at
16 all. It's at most one -- even if every trade we have that's
17 not in the step-outs is different from the Citi trades,
18 which is probably not true, it's a one percent increase in
19 the number of trades.

20 THE COURT: That doesn't necessarily mean it's a
21 one percent difference in the effort and burden to the
22 parties, however. You're -- I'm -- I'm just quibbling with
23 your mathematical precision. I don't know that the
24 percentage that your trades bear to the whole represents a
25 fair analogy to the percentage of increased work associated

1 with having you as a party to the case.

2 MR. MARTIN: Well, we certainly haven't had any
3 disputes with Citi to this point. And, you know,
4 interestingly enough we've -- the Lehman estate has agreed
5 on the -- you know, with respect to the step-outs to let us
6 in. They've sought -- they've indicated that they would
7 like to ultimately mediate this in any event. They're going
8 to have to give us information in connection with that
9 ultimately anyway.

10 THE COURT: Your papers suggest an eagerness to
11 mediate.

12 MR. MARTIN: I'm sorry, Your Honor. I --

13 THE COURT: Your papers suggest an eagerness to
14 mediate.

15 MR. MARTIN: We have been highly eager to mediate,
16 Your Honor. In fact, that was -- it was our understanding
17 at the time that the reason the claim objection was filed 21
18 months ago was because under the AER procedures for claims,
19 unlike the payables, it starts with a claim objection and we
20 responded expecting that. And Lehman has the right to -- to
21 conduct it in the way they want, and we've been on hiatus
22 and haven't been pushing it since then.

23 But when brought into a litigation where we know
24 we're going to have some significant number of our folks
25 deposed and have to prepare them and gather all of the

1 documents for this period, we would like to know we're doing
2 that all at once. And it frankly cuts down on potential
3 disputes with this Court. And if -- if they're doing this
4 for Citi anyway, if they have to come up with discovery
5 requests to get at, you know, how Citi priced their trades,
6 which is a big part of their thing, it's going to be the
7 same request to us. It's not clear to me -- I -- while I
8 hear the Court saying, maybe the one percent of additional
9 names isn't one percent of additional works, I'm not -- I'm
10 actually hard-pressed myself, Your Honor, to understand in
11 what circumstances that would not be the case.

12 We, for example, have looked at the question of
13 what kind of trades are we talking about. That might be
14 true, for example, if Citi had, say -- to take an extreme
15 example -- all currency derivatives and we had mortgage-
16 backed security-based derivatives, so that, you know, the
17 experts valuing them might be different. But that's not the
18 case. Seventy-four percent of the trades that we have in
19 the overall universe are NBS-related derivatives, which are
20 the exact things in the failed step-outs. It's going to be
21 the same questions that we're getting at overall.

22 THE COURT: Well, let's -- let's find out why
23 others disagree with you.

24 MR. MARTIN: That's fine, Your Honor.

25 MR. ROSSMAN: Good morning, Your Honor. Andrew

1 Rossman with Quinn Emanuel for the official creditors'
2 committee.

3 Your Honor, if I may, I have a couple of pieces of
4 paper that may be illuminating for you, if I could hand them
5 up.

6 THE COURT: When it comes to pieces of paper, I'm
7 always happy to see them.

8 MR. ROSSMAN: Okay.

9 THE COURT: Sure. It depends on what's on it. Is
10 it a check?

11 (Laughter)

12 MR. ROSSMAN: The check comes later, Your Honor.
13 Don't tell anyone.

14 I do have copies to hand out.

15 So, Your Honor, I think it's worth spending a
16 couple of minutes explaining why we brought Bracebridge in,
17 at least for purposes of discovery, into our dispute with
18 Citi. We're not picking on them. They're here for a very
19 specific reason. We think that the Bracebridge step-out
20 novation, which was a transaction that happened on September
21 11th, just four days before the bankruptcy, was -- is an
22 open question in Citi and an open question in -- in the
23 Bracebridge objection that needs to get resolved. The
24 parties are in agreement on that.

25 And if you -- if you take a minute, Your Honor, I

1 just want to explain to you the two significances of that
2 transaction and then I'll -- I'll tell you what our position
3 is with respect to the intervention and why we think it's
4 appropriate for them to intervene on that issue, but not to
5 intervene on all the other issues which bear no relevance to
6 this particular dispute.

7 The first, if you would, you can take a look at
8 the chart because I think it will give you an explanation of
9 exactly what happened. What we have here are a series of
10 trades. These are CDS on RMBS, so they're CDS on mortgage-
11 back securitized products. And Lehman was essentially in
12 the middle of these trades. Bracebridge sold protection to
13 Lehman. Lehman, in turn, sold protection to Citibank.

14 So the theory of this novation which made perfect
15 sense at the time, if you look at the second page, was to
16 collapse the trades. Get Lehman out of the middle and have
17 Bracebridge dealing directly with Citi. Bracebridge and
18 Citi found each other. Okay.

19 It understands Bracebridge and Citi were
20 developing a relationship during this time period.
21 Bracebridge and Citi were both looking to eliminate their
22 Lehman exposure and they come up with this trade. The trade
23 was done. It was effective. It was confirmed, consented by
24 all three parties. Our position is it's good.

25 THE COURT: I -- I understand that and I also

1 understand that from reading the papers. But this chart
2 appears to relate to that aspect of this controversy that's
3 really undisputed. You're perfectly happy to have
4 Bracebridge involved because you see the overlap as to the
5 litigation, but what about the different aspects of the
6 transaction?

7 MR. ROSSMAN: Well --

8 THE COURT: The different aspects that concern
9 Bracebridge.

10 MR. ROSSMAN: Right, Your Honor. We -- we think
11 -- the point that I would make with this is there is a
12 unique aspect where there is overlap and where it's
13 important for us to have Bracebridge participate. We tried
14 to do it by discovery, by issuing a subpoena. Whether
15 they're the subject of a subpoena, a 2004 or party
16 discovery, obviously, they've got an obligation to turn over
17 relevant documents and participate. If they want to come
18 forward and be heard, they may. We don't object to that, if
19 they want to appear on that particular issue.

20 The point, Your Honor, is that that is a unique
21 issue. It is one transaction -- one series of transactions,
22 and whether that transaction is effective, in which case
23 those trades remain in the trade population for Bracebridge
24 and in the trade population for Citi and we have to deal
25 with those close-out issues, or whether they are not

1 effective is the only issue for which we need Bracebridge to
2 participate, at least for discovery purposes, in this
3 litigation. What --

4 THE COURT: I understand, but what they --

5 MR. ROSSMAN: What they would like to do --

6 THE COURT: -- what they say -- and I'm interested
7 in your response to this -- is that as to us, Bracebridge,
8 we're in a litigation, but we also have a whole bunch of
9 other trades that don't fit within the step-out model.
10 They're just trades that the estate challenges for whatever
11 reason.

12 MR. ROSSMAN: Correct.

13 THE COURT: And it would be really convenient if
14 everything that relates to Bracebridge were brought into
15 this litigation and maybe it would also expedite a
16 resolution through mediation or otherwise so that they would
17 save legal expense and not have to have witnesses to post.
18 I think that's their argument.

19 So what's wrong with that?

20 MR. ROSSMAN: Well, there may be some incremental
21 savings on Bracebridge's side, but there's even greater
22 burden on the estate's side to have to deal with their
23 claims, which we wouldn't otherwise have to deal with now.
24 They would be in the same position as all the other
25 derivatives, counterparties to whom we objected via an

1 omnibus objection. Those claims are subject to the
2 mediation and ADR order that Your Honor entered and has been
3 enormously successful in this case. We've settled hundreds
4 of thousands of derivative claims thanks to that without
5 having to bring them before the Court to litigate.

6 What we're trying to do, Your Honor, is to isolate
7 those issues that we think need Your Honor's attention
8 because they stubbornly won't resolve. So, for example, we
9 settled with ten of the 13 big banks. We have three
10 remaining big banks, two of which we brought claim
11 objections against: JPMorgan and Citi. Those happen to be
12 clearing backs that have taken billions of dollars of
13 collateral that we're also challenging. We don't think
14 that's a coincidence. But we don't see those as resolving
15 and we brought those before the Court.

16 But we've tried very hard to resolve everything
17 else. I think what you heard from Bracebridge's counsel is
18 they want a mediation once we clear up this issue. And we
19 fully expect that we will have every chance of success in
20 resolving those claims without the need for formal
21 discovery, without the need for depositions, without the
22 need for any proceedings in this court once we resolve the
23 gating issue of whether or not that step-out novation was
24 effective or not effective.

25 THE COURT: Recognizing that that's the front and

1 center issue that everybody acknowledges provides a nexus
2 between Bracebridge and the pending litigation, how would it
3 prejudice the other parties to the litigation if Bracebridge
4 were in the case for all purposes, including the unrelated
5 claim objections?

6 MR. ROSSMAN: The Bracebridge will require us,
7 Your Honor, to take on approximately 700 new transactions
8 that we have not previously been examining, that we have not
9 been litigate -- other than in, you know, some early
10 discussions with Bracebridge, we have not been litigating
11 those positions. We have not been building valuations of
12 those positions.

13 And it may be that Citi also has CDS on mortgage-
14 backed securities. Many people have CDS on mortgage-backed
15 securities, but we don't necessarily know that those are the
16 same 700 that Bracebridge have. We know that these trades
17 overlap. We know that these trades are mirror images and
18 Bracebridge and Citi can both participate in those at the
19 same time.

20 But the others will put us to significant burden.
21 We'll have another party kicking around in the case,
22 throwing discovery requests at us. And we think all of that
23 -- our hope is, Your Honor, that all of that will be for
24 naught because once Your Honor resolves the question of
25 whether those trades are in the population or whether they

1 have been novated out and now it's just between Bracebridge
2 and Citi, we think we can sit down -- we hope we can sit
3 down with Bracebridge like we have with most other parties
4 and resolve those disputes without having to go through that
5 considerable expense. That's all we're saying.

6 THE COURT: So would it be a fair characterization
7 of what you've just said that you view the litigation of
8 matters that are extraneous to the step-out transactions to
9 be a burdensome distraction, largely because you don't need
10 to address it now and you believe that it would be most
11 expedient to deal with the areas of overlap, resolve that,
12 and once resolved either way, to then deal with the universe
13 of other trades with Bracebridge?

14 MR. ROSSMAN: That's correct, Your Honor.

15 THE COURT: Okay. I would like to hear from other
16 parties who may be affected by this.

17 MR. SHIMSHAK: Your Honor, good morning. Steve
18 Shimshak for the Citi defendants. We did not submit any
19 objection or statement position in connection with this.
20 It's -- it's I want -- I did want to clarify, it's not
21 correct that Lehman sought to include Bracebridge in the
22 litigation.

23 In fact, in our amended answer, which we filed on
24 the 14th of February, we asserted, after we saw the
25 Bracebridge allegations, an affirmative defense, a failure

1 to join a necessary party. And that led to Bracebridge's
2 motion to intervene. So in Lehman's view of the world, they
3 were fully prepared to try and litigate this matter without
4 including Bracebridge.

5 We have some sympathy to the position that Mr.
6 Ross (sic) and Bracebridge find themselves in. Lehman has
7 brought them into the litigation and I think one of the
8 burdens of that, quite understandably, may be the need to
9 reach Mr. Ross's (sic) clients' issues. We don't have an
10 objection to their inclusion or to the additional claims
11 that would be resolved. We have over 30,000 claims at
12 issue. An additional 700 in the course of a litigation
13 that, on the existing schedule, will span at least another
14 year does not seem to us to be too burdensome.

15 THE COURT: Okay.

16 MR. MARTIN: Just two maybe factual points and one
17 observation. I'll be very brief, Your Honor.

18 One, there are actually non-step-out trades that
19 we have with Lehman -- not a huge number, I don't want to
20 oversell the point -- that are the same as the step-out
21 ones. There is some actual overlap between the non-step-out
22 ones and these. Again, I don't want to oversell the point,
23 but there are some -- some trades that -- that directly
24 overlap.

25 Secondly, just to clarify the numbers, there are

1 somewhere between -- I think our count was 900 trade --
2 trades because we have three funds, but this is one of those
3 circumstances where, you know, there are 300 names that were
4 -- you know, trades that were done and they were allocated
5 between the three funds. So there's really -- just so the
6 facts are clear, it's -- it's only an addition of 300 things
7 that, at most, would need to be valued. Other than that,
8 it's just the arithmetic of splitting it up between the
9 funds. So I just want to make sure that that fact is clear.

10 And the last point that I -- I want to make is
11 about the mediation. We -- we remain ready, willing and
12 able to do that. I find it a little curious that we
13 couldn't, you know, be in this litigation and have a
14 mediation that encompassed the failed step-out trades.

15 I mean, to be quite honest, Your Honor, I've been
16 involved in a number of the mediation and I whole-heartedly
17 agree it's a very successful program. I find it a little
18 curious to exclude, you know, a disputed fact and legal
19 issue, which is exactly the kind of thing very skilled
20 mediators often help with, you know, whether the step-out
21 happened, to exclude that as opposed to the nuances of
22 pricing of RMBS trades. It seems to me that if we can get
23 this into a posture where the whole thing is together and
24 get the discovery back and forth between both sides in an
25 efficient, clear manner, that actually will help resolve

1 these matters in a -- in an efficient way.

2 That's all I have, Your Honor.

3 Thank you.

4 THE COURT: Okay. This is, frankly, difficult
5 because when you're dealing with anything that's objective,
6 it's really more a question of taste. It sounds to me that
7 Bracebridge and Citi are essentially aligned with respect to
8 the proposition that putting everything into the litigation
9 won't be burdensome, at least to the defendants. And in
10 order to minimize the intervention I need to accept the
11 truth of the proposition that is more judgment than it is
12 fact; the judgment being that there will be some incremental
13 work, although it's hard to say how much, by virtue of
14 having all of the Bracebridge trades in the case.

15 But more particularly, all issues with Bracebridge
16 might be effectively resolved by agreement if the threshold
17 question of the step-out trades were to be decided,
18 presumably in the context of this litigation as opposed to
19 some stipulation or mediated outcome.

20 At this early stage of the litigation, both sides
21 are really speculating and asking me to speculate with them
22 as to which alternative makes the most sense in terms of
23 efficient case management. My initial inclination before
24 argument was that it made eminent sense for the overlapping
25 step-out transactions to be heard at the same time in the

1 main litigation against Citi.

2 But in hearing the argument in reference to the
3 relatively inconsequential nature of the burden associated
4 with the incremental unrelated trades, and hearing that the
5 defendants themselves are perfectly comfortable dealing with
6 what amounts to a little bit of extra work, I don't see a
7 particular burden on the plaintiff in consolidating the
8 entire dispute as one dispute, and will enter an appropriate
9 order that reflects that decision.

10 MR. MARTIN: Would you like us to prepare an order
11 with the consent --

12 THE COURT: Absolute --

13 MR. MARTIN: -- of the parties, Your Honor?

14 THE COURT: Absolutely.

15 MR. MARTIN: We will -- we will do that and we
16 will figure out what the title of the intervention pleading
17 will be in the adversary, Your Honor. We'll -- we've had
18 some debate about that. I --

19 THE COURT: If the hardest part is figuring out
20 the title, it shouldn't be that hard.

21 (Laughter)

22 MR. MARTIN: I think that's right, Your Honor.

23 Thank you very much.

24 MR. ROSSMAN: Your Honor, thank you, Your Honor.

25 We will need a pleading on that as required by Rule 24.

1 MR. MARTIN: That's no problem.

2 THE COURT: Okay.

3 Lehman Brothers Australia.

4 MR. MARTIN: Your Honor, could we be excused?

5 THE COURT: Oh, yes. Of course.

6 MR. GETTLEMAN: Good morning, Your Honor. Jeffrey
7 Gettleman representing the liquidators of Lehman Brothers
8 Australia. We're here today on the liquidators' motion to
9 -- seeking approval of a settlement with a group of U.S.
10 Insurers and a settlement agreement, to which there have
11 been no written objections filed.

12 So --

13 THE COURT: Have there been any other objections
14 asserted?

15 MR. GETTLEMAN: I -- no objections have come to my
16 attention, Your Honor.

17 THE COURT: That's even better.

18 MR. GETTLEMAN: And so I'll be happy to go through
19 the points and -- but I'll also be happy to answer Your
20 Honor's questions, if you have any.

21 THE COURT: One question I have is why this took
22 so long. It looked to me as if the essential settlement was
23 worked out maybe nine or ten months ago.

24 MR. GETTLEMAN: Correct. The settlement agreement
25 was entered in last May, I believe. So the -- what's

1 happened since -- well, you'll -- you'll recall that we were
2 before you on October, I think, with a status report on
3 where things stood with the Australian liquidation. And,
4 you know, even since between the -- October and now things
5 haven't moved quite as quickly as we expected them to.

6 So, I mean, clearly, I'm not representing them in
7 their Australian proceeding, but -- but having discussions
8 with the clients, you know, it's clear that the discussions
9 regarding their scheme of arrangement, you know, were --
10 took -- took longer than they thought.

11 I can report to you today, just briefly, Your
12 Honor, that the scheme documents are actually going to be
13 filed with the Australian court this Friday. So we're
14 finally at a point where the scheme can proceed.

15 The other thing that I think took time, or I -- I
16 should say took focus away from this particular settlement
17 was the entry of Justice Rares' reasons, the 450 page
18 opinion that you're aware of. And I think it just took the
19 parties time to absorb the implications of -- of the ruling
20 and how that might affect the negotiations for the scheme.

21 THE COURT: How did it effect the negotiations for
22 the scheme?

23 MR. GETTLEMAN: Well, I -- so I -- well, it
24 actually makes our settlement look more attractive because
25 the settlement was reached with the U.S. Insurers prior to

1 Justice Rares' reasons being published. And it was
2 certainly based on everyone's assumptions about, you know,
3 risks and so forth of -- and that's where the -- that's
4 where the settlement amount came from.

5 So in hindsight, I mean, Justice Rares -- the
6 trial that Justice Rares' reasons were based on wasn't --
7 didn't directly cover insurance coverage defenses. But what
8 it did is it found certain facts that would certainly bear
9 on those issues. And so one could certainly argue that the
10 reasons that -- or at least some of the reasons that
11 appeared in the opinion, you know, could have formed the
12 basis for supporting some of the coverage defenses.

13 So -- so we feel that, you know, it makes our --
14 our settlement even more attractive in hindsight.

15 THE COURT: Well, I'm still not sure why it took
16 so long for it to be presented here for approval, but it
17 doesn't matter. It's here now and there are no objections.
18 I've examined it. It appears to certainly be above the
19 minimum level of a reasonable settlement with Insurers at
20 \$45 million. And unless somebody has anything to say with
21 respect to this, it's approved.

22 MR. GETTLEMAN: Thank you, Your Honor.

23 THE COURT: Then it is approved. I just need an
24 order.

25 MR. GETTLEMAN: Yes. I have an order.

1 THE COURT: Maybe you could leave that with
2 debtors' counsel and everything could be submitted at one
3 time.

4 Does that include an electronic copy of it?

5 MR. GETTLEMAN: Your Honor --

6 THE COURT: Because -- because while -- while
7 we're happy to have paper, it doesn't do much for the
8 docket.

9 MR. GETTLEMAN: What -- what we were going to do,
10 Your Honor, is to provide your chambers with an electronic
11 copy.

12 THE COURT: That will be fine.

13 MR. GETTLEMAN: Okay.

14 THE COURT: Thank you.

15 MR. GETTLEMAN: Thank you.

16 MR. WIN: Good morning, Your Honor. Zaw Win,
17 Weil, Gotshal & Manges for Lehman Brothers Holding, Inc. and
18 certain of its affiliates.

19 The next matter on the agenda is in the adversary
20 proceeding of Williams-Pate, which is adversary proceeding
21 number 12-01220.

22 THE COURT: Okay.

23 MR. WIN: As Your Honor knows, this is now the
24 fourth time that we've been before you on this matter. This
25 case involves certain claims that were brought by an

1 individual against Lehman Brothers Holdings, Inc., Aurora
2 Bank and the Law Firm of McCurdy & Candler.

3 As you know, this proceeding has been going on for
4 almost a year. The defendants -- Lehman Brothers Holdings,
5 Inc. and the two other parties that I just mentioned -- have
6 filed two sets of motions to dismiss. The last time we were
7 before Your Honor was December 18th where we had a status
8 conference, and at that time Your Honor directed us to
9 comply with a briefing schedule, which required the
10 plaintiff to submit responsive papers by the 6th of this
11 month, which he has not done.

12 So as it stands now, the three motions to dismiss
13 that we -- that the three defendants have filed are
14 uncontested. So unless Your Honor has any questions, or
15 unless Ms. Williams-Pate is on the line and would like to
16 make any statements, we would ask the Court to enter the
17 motions to dismiss.

18 THE COURT: Let me find out if the plaintiff, Ms.
19 Williams-Pate, is either represented today or if she is
20 appearing telephonically.

21 MR. PATE: Yes, sir. I'm her husband, Ronald
22 Pate.

23 THE COURT: I'm sorry. It's hard for me to hear.
24 Could you --

25 MR. PATE: Yes, sir. I'm her husband, Ronald

1 Pate. My wife is at work right now, Your Honor.

2 THE COURT: And, Mr. Pate, I take it you're not a
3 lawyer?

4 MR. PATE: No, sir, I'm not.

5 THE COURT: You're -- you're appearing as a spouse
6 to listen in or are you hearing -- are you appearing to say
7 anything with regard to the merits of the litigation?

8 MR. PATE: Well, both, Your Honor. I'm requesting
9 that the case do not -- my wife would like for the case not
10 to be dismissed. We have litigation pending in Forsyth
11 County Court, which is a quiet title action. We have been
12 trying to get in contact with Lehman Brothers, but the
13 problem is right now, Your Honor, is that, one, Lehman
14 Brothers, Aurora Loan filed these -- to foreclose on us.
15 Aurora Loan sent papers to us stating that they no longer --
16 Lehman Brothers sent the paperwork stating that Aurora no
17 longer -- never owned the house. Now we have another
18 company we're dealing with, which is Nationstar who says
19 that Lehman Brothers gave them the loan.

20 So we don't know who we're dealing with right now,
21 but Nationstar came over to our residence last Saturday
22 morning and came through the door and stated that the house
23 had been foreclosed on and the house has not been foreclosed
24 on. And they -- and we called the police. The police said
25 they could not get involved. It was a civil matter, but

1 they did have papers showing that Lehman Brothers had
2 transferred this loan to Nationstar.

3 So we're asking that the -- this case be placed on
4 hold pending the outcome of the litigation that is in
5 Forsyth County Court which is a quiet title action.

6 THE COURT: Are you one of the plaintiffs in that
7 state court litigation in Georgia?

8 MR. PATE: Yes, sir.

9 THE COURT: Okay. I would like to give the
10 attorneys who are here for the defendants an opportunity to
11 comment with regard to what we've just all heard.

12 MR. WIN: First of all, Your Honor, I'm not sure
13 what they mean when they said that they've tried to contact
14 us. I did speak to Ms. Williams-Pate yesterday to -- to
15 just make sure that she was aware that the scheduling of
16 this hearing had been moved from 2 p.m. this afternoon to
17 this morning, and she didn't mention anything about this
18 Georgia action to me at that time, nor -- nor have we
19 received any other communication from them.

20 I certainly don't want to put words into their
21 mouth, but I suspect that there may be some confusion
22 between Lehman Brothers Holdings, Inc., which is the party
23 that we represent, and Lehman Brothers Bank, which is the
24 name that Aurora -- Aurora Bank went by before the name was
25 changed a few years ago. So they may be complete --

1 conflating actions that Lehman Brothers Bank takes with
2 Lehman Brothers Holdings. But, obviously, they're two
3 separate entities.

4 As for Nationstar, I'm not aware of who the
5 servicer of this property is now. It may be that it's
6 Nationstar. But as set forth in our papers, Lehman Brothers
7 Holdings disposed of its interest in this property prior to
8 the bankruptcy, and to my knowledge since then, other than
9 with respect to this adversary proceeding, has not had
10 anything to do with it. But I'll turn the podium over to my
11 -- the other defendants.

12 THE COURT: All right.

13 MR. ZACHARDA: Good morning, Your Honor. Andrew
14 Zacharda on behalf of defendant, Aurora Bank, F.S.B.

15 I don't really have anything to add factually to
16 what Mr. Pate has related to the Court. It may well be that
17 servicing of what is left of this loan transaction is now
18 with Nationstar Mortgage, but none of that should have any
19 bearing on the present motions to dismiss the pending
20 adversary proceedings in this court.

21 If anything, I think that only strengthens our
22 argument, the disclosure that there is also now pending in
23 Forsyth County, Georgia, a quiet title action which
24 essentially would raise all of these same issues in the
25 appropriate forum. This particular adversary proceeding,

1 this consolidated adversary proceeding, pertains only to a
2 single mortgage loan transaction affecting one piece of
3 property in Forsyth County, Georgia.

4 And for the reasons we expressed in -- in our
5 motion and in our amended motion papers, those issues have
6 absolutely no connection to the instant bankruptcy case and
7 do not deserve to be in the Southern District. They deserve
8 to be litigated in the host forum where the property is
9 located.

10 Thank you.

11 THE COURT: All right. Thank you.

12 MR. JOSE: For the record, Judge, Dennis Jose from
13 Gross, Polowy & Orlans representing McCurdy & Candler.

14 Your Honor, we -- we represent the law firm that
15 was handling the foreclosure matter in Forsyth County,
16 Georgia for a period of time. We are -- we are named as
17 defendants in the adversary complaint and list a variety of
18 generalized speculative causes of action. We've addressed
19 them one by one in our argument in the motion to dismiss.

20 Judge, at this point, to the extent that there is
21 -- as prior counsel has just suggested, to the extent that
22 there is a litigation in Forsyth County, Georgia, where
23 essentially the same issues are raised, albeit made in the
24 context of a new service that has taken over the loan in
25 either a foreclosed upon or a to be foreclosed upon

1 mortgage, I think that's what should be -- should proceed as
2 opposed to these adversary proceedings.

3 I think all parties have set forth their -- their
4 pleadings in quite detail and explained why the complaints
5 or the transferred complaints in the federal court are --
6 are -- do not set forth a course of action or should not be
7 before this Court as a matter of jurisdiction.

8 And, respectfully, Judge, at this point, the
9 debtor who was -- the individual, Ms. Williams-Pate, who was
10 pro se initially and is currently the same way as well, has
11 not set forth any oppositions to our motion to dismiss, not
12 set forth any grounds other than what we have heard today,
13 which clearly point towards at least a remanding or at least
14 a -- at the very least a remanding of the matter to Forsyth
15 County or any other appropriate jurisdiction and dismissal
16 of the adversary complaints here.

17 Therefore, Your Honor, I would just request that
18 the matters be dismissed.

19 THE COURT: Okay.

20 Mr. Pate, do you have any comments?

21 MR. PATE: Well, yes, sir.

22 Your Honor, on -- back in May of 2012, on May the
23 7th, Lehman Brothers sent us a correspondence stating that
24 they were the owner of our mortgage. So, therefore, this
25 matter should not be dismissed. Yes. We would be willing

1 to dismiss the other defendants, the law firm, but I think
2 this matter should be stayed pending the outcome if Lehman
3 Brothers do own our mortgage or not. That's all we've been
4 asking them, are they the owners. They've been sending us
5 correspondence. They've been communicating with us. The
6 first filing that they did was on May the 7th to respond
7 back. That's when we learned that Aurora Loans does not
8 have our mortgage anymore, and that's when the Court agreed
9 with us in Forsyth County and said, okay, transfer the
10 matter to Superior Court.

11 But the matter right now that comes abroad (sic)
12 is Nationstar stated that they received our mortgage from
13 Lehman Brothers. So we would like to have that clarified
14 before the motion is dismissed. Nationstar came to our home
15 Saturday morning, and we called the police, with paperwork
16 from Lehman Brothers stating that they are -- they were --
17 our mortgage was transferred to them.

18 THE COURT: Okay. May I hear from Lehman's
19 counsel?

20 MR. WIN: Yeah. I mean, once -- once again, we
21 haven't sent them any correspondence. Lehman Brothers
22 Holdings, Inc. has not sent them any correspondence to my
23 knowledge representing that we own the loan. In fact, in
24 our papers we've said, you know, I guess on three separate
25 occasions now that we have no interest in the loan. So I'm

1 not sure when he says Lehman Brothers whether he's referring
2 to Lehman Brothers Holdings or some other entity.

3 And -- and I guess second, the pleadings that the
4 Pates have filed in this case raise really three issues:
5 Two issues regarding certain claims that allegedly were
6 filed, unclear where; an issue of quiet title, which it
7 sounds like is now pending in the Georgia litigation; and
8 then, also, an issue involving liable.

9 So with respect to three of those issues, the two
10 issues involving the claim and the issue involving liable,
11 it sounds like there -- there's no contest to our motion to
12 dismiss those three issues.

13 And with respect to the fourth one, now the quiet
14 title action, you know, we have now discovered that it's
15 also pending in Georgia State Court. And so, you know, it
16 seems to us it's very clear that the first three issues, the
17 three issues that -- you know, the non-quiet title issue
18 should certainly be dismissed since they've not been
19 contested.

20 And with respect to the quiet title issue, you
21 know, with due respect, the -- Ms. Williams-Pate doesn't get
22 two bites at that apple. That issue is going to be decided
23 in Georgia and there's no reason to hold this case open to
24 have, you know, potentially a conflicting judgment come down
25 in this Court, which is certainly, you know, an odd venue

1 for an issue involving title to real property to be decided,
2 particularly one that doesn't involve New York State.

3 THE COURT: Okay.

4 Here's what I'm going to do. This litigation has
5 been pending for a considerable period of time. The
6 plaintiff is unrepresented by counsel, but has appeared
7 today by telephone through her husband, Mr. Pate, who has
8 expressed a desire that the Court withhold its ruling with
9 regard to the pending motions to dismiss pending resolution
10 of a state court quiet title action in Forsyth County,
11 Georgia.

12 The pleadings are extensive and involve two
13 separate federal litigations that have been consolidated
14 here: The first having been filed some time ago; the second
15 being a District Court matter that was referred here and
16 then consolidated involving essentially the same
17 allegations.

18 The defendants, Lehman Brothers Holdings, Inc.,
19 McCurdy & Candler, LLC, and Aurora Bank, F.S.B. have each
20 filed motions to dismiss. The motions to dismiss include,
21 as a form of alternative relief, a request that the Court
22 abstain from exercising jurisdiction over the litigation
23 under 1334(c)(1).

24 The litigation itself, by its very nature, does
25 not directly implicate any issues in this Bankruptcy Court.

1 The only nexus to the Southern District of New York is the
2 claim made against Lehman Brothers Holdings, Inc., which is
3 a debtor in this Bankruptcy Court, although I would note
4 that Lehman Brothers Holdings' bankruptcy case is in a
5 somewhat different posture from that of most Chapter 11
6 debtors in that a plan of reorganization for LBHI was
7 confirmed on December 26th, 2011, and currently there is a
8 plan administrator that is acting on behalf of the debtors'
9 estate to manage the process of converting assets to cash
10 and making distributions to creditors.

11 In its motion to dismiss, LBHI asserts that it has
12 absolutely no connection to this dispute, having disposed of
13 any interest in the underlying mortgage in 2007 prior to the
14 commencement of the bankruptcy.

15 This is not a factual determination by the Court
16 as much as it is a procedural review based upon the nature
17 of the allegations and the nature of the procedural defenses
18 to those allegations.

19 As a matter of pure pleading, the motions to
20 dismiss are unopposed. No papers have been filed in
21 opposition to the motions of LBHI, McCurdy & Candler, and
22 Aurora Bank. However, Mr. Pate, acting as a representative
23 of his wife, has requested that the Court defer
24 consideration. I appreciate that request, but I am not
25 inclined to further delay a resolution of this matter, at

1 least as it relates to procedure.

2 I am going to grant the motion to dismiss as it
3 relates to Lehman Brothers Holdings, Inc. inasmuch as Lehman
4 Brothers Holdings, Inc., as a legal entity, has no
5 connection whatsoever to the underlying dispute.

6 That is not the case as it relates to either
7 McCurdy & Candler and Aurora Bank, F.S.B. McCurdy &
8 Candler, as a local law firm, appears to have had something
9 to do with the mortgage transaction in question, but I heard
10 Mr. Pate say on the telephone that he really doesn't have
11 any present claim as to McCurdy & Candler. The problem, of
12 course, is that Mr. Pate is not the plaintiff in this
13 litigation, nor is it clear that Mr. Pate is in a position
14 to act on behalf of his wife when it comes to disposing of
15 litigation claims against McCurdy & Candler since he's not a
16 lawyer.

17 Aurora Bank itself may, in fact, have been known
18 as Lehman Brothers Bank at some point, and so it is
19 possible, but by no means clear, that when Mr. Pate talks
20 about Lehman he's actually talking about Aurora Bank.

21 In the end, however, the real issue here is which
22 Court should be deciding questions relating to title to
23 residential property located within the State of Georgia. I
24 am convinced it should not be this Court, but rather the
25 court in Georgia that is currently dealing with the quiet

1 title litigation.

2 Accordingly, I grant the motion to dismiss as to
3 Lehman Brothers Holdings, Inc., but as to McCurdy & Candler
4 and Aurora Bank, F.S.B., I make no decision with respect to
5 the merits of the complaint and, instead, abstain from
6 further jurisdiction with respect to those complaints. And
7 the Court in Georgia can decide any claims to the extent
8 cognizable with respect to these two defendants.

9 Mr. Pate, what I've basically said is that I'm not
10 going to hear the litigation anymore.

11 MR. PATE: Yes, sir.

12 THE COURT: I'm stepping aside in favor of the
13 state court in Georgia that has jurisdiction of your real
14 estate and that presumably is a much more convenient forum
15 for you and your wife to present your defenses and to be
16 heard. Is that clear?

17 MR. PATE: Yes, sir. It's very clear.

18 THE COURT: Okay. Fine. I'll take an appropriate
19 order.

20 MR. WIN: Thank you, Your Honor. We'll confer and
21 submit that proposed order.

22 THE COURT: Okay.

23 MR. JOSE: Thank you, Judge.

24 THE COURT: Thank you.

25 MR. ZACHARDA: Thank you.

1 MR. WIN: The final matter on the agenda today,
2 Your Honor -- sorry. Zaw Win from Weil, Gotshal again.

3 The final matter on the agenda today is Lehman
4 Brothers Financial Products, Inc. versus Bank of New York
5 Mellon. It's the presentment of an order granting
6 interpleader, so I'll turn the podium over.

7 MR. VENDITTO: good morning, Your Honor. Michael
8 Venditto from Reed Smith on behalf of the Bank of New York
9 Mellon.

10 Your Honor, the Bank of New York Mellon submitted
11 a proposed order granting interpleader relief, which is
12 essentially a procedural order in this adversary proceeding.

13 The debtors commenced this adversary proceeding
14 back in 2010 and has recently negotiated in the course of
15 the derivatives ADR process a settlement with the issuer.
16 The Bank of New York Mellon acts as the custodian of the
17 collateral for some of the parties in the litigation as well
18 as parties who are not party to this litigation. For that
19 reason, it commenced this interpleader action to join
20 parties who have an interest in the collateral that will be
21 the subject of the proposed settlement so that they could
22 have a forum to raise their concerns and that the Court's
23 ultimate decision would be binding on all affected parties.

24 The purpose of the proposed order was to affect
25 the procedure. It was negotiated heavily with counsel for

1 the debtor to ensure that the parties received adequate
2 notice, and that the bank would continue to hold the
3 collateral pending an ultimate resolution of the settlement
4 procedures by the Court.

5 So the proposed order was submitted, served on the
6 parties to the litigation. We have not received any
7 objection. It was originally noticed for settlement or
8 presentment to the Court on March 1st. No objections were
9 filed. However, the Court did request a declare -- a
10 declaration from a party having personal knowledge of
11 certain facts to support the recitations in the proposed
12 order.

13 We submitted that declaration to the Court earlier
14 this week. And since there have been no objections, we
15 respectfully request that the order be entered.

16 THE COURT: There are no objections. The
17 declaration deals with the findings of fact set forth in the
18 order and I will enter the order.

19 Thank you.

20 MR. VENDITTO: Thank you, Your Honor.

21 MR. WIN: If I could actually just make one point.

22 In paragraph K of the proposed order, the order --
23 the order was submitted several weeks ago, I think, so since
24 that time the Court has further extended the stay of
25 avoidance actions. So we would just like paragraph K to be

1 updated to reflect the entry of that order and the further
2 extension of the --

3 THE COURT: That's --

4 MR. WIN: -- order and such.

5 THE COURT: -- perfectly fine.

6 MR. WIN: Excuse me. I misspoke. There's
7 actually one more matter on the agenda for the Court. It's
8 the JPMorgan matter.

9 THE COURT: That's why everybody's in the
10 courtroom.

11 (Laughter)

12 MR. VENDITTO: Thank you, Your Honor. We'll
13 submit a revised form of order.

14 THE COURT: Okay.

15 So let's proceed with the JPMorgan matter.

16 MR. ROSSMAN: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. VIZCARRONDO: Good morning, Your Honor.

19 MR. ROSSMAN: May I proceed, Your Honor?

20 THE COURT: Please.

21 MR. ROSSMAN: Andrew Rossman with Quinn Emanuel
22 for the official creditors' committee of JPMorgan. Sorry.
23 I switched sides for a moment there, Your Honor. I'm still
24 on the side of the right, the official creditors' committee
25 of Lehman Brothers.

1 Your Honor, we're here on what should be a routine
2 application to take a deposition abroad. As Your Honor well
3 knows from having issued probably many dozens of them in
4 this case alone, it is the Hague application, it's the
5 United States statute of treaty and fact that permits the
6 obtaining of evidence abroad for a case in the United
7 States.

8 The standard which Your Honor wells know for
9 granting a Hague application is a very permissive one. It
10 is -- has been found by courts to be the same standard for
11 getting discovery under Rule 26. So, effectively, you can
12 see this proceeding as the equivalent of a party's effort to
13 quash a subpoena being served on a third party.

14 Now, Your Honor, we are here -- I think it
15 deserves some explanation -- seeking permission to take the
16 deposition in France of an individual named Bruno Iksil.
17 And the reason why this came to light in 2012 and why we are
18 seeking that deposition, I just want to take a couple of
19 minutes to explain it to you, Your Honor.

20 I think the reason why a lot of folks are in the
21 courtroom today is because there were headlines in the
22 spring of 2012 about a scandal coming out of JPMorgan's
23 chief investment office surrounding someone who is referred
24 to colloquially as the London Whale. That's Bruno Iksil.

25 And, Your Honor, we were, as you would imagine, as

1 stewards of the estate's resources, responsible for looking
2 at that and ensuring ourselves as to whether or not there
3 was an overlap with the Lehman case. And we did that and we
4 were surprised to find that there were two very significant
5 areas of overlap that caused us to engage in further
6 inquiry.

7 As Your Honor knows, this case is about \$8.6
8 billion of cash collateral that JPMorgan coerced Lehman into
9 handing over in the last four business days of Lehman's
10 existence before LBHI filed for bankruptcy on Monday,
11 September 15th. And we allege that there was no appropriate
12 basis for the demand of that collateral. It wasn't
13 appropriately calculated. It was outside the realm of the
14 parties' contracts. It was outside of commercial practice.
15 It was unreasonable and unjustifiable, but that Lehman had
16 no choice; that when faced with a demand by their clearing
17 bank, by the bank that gave them their oxygen every day they
18 had no choice but to turn over that collateral.

19 With respect to Mr. Iksil's deposition, there are
20 two issues that we would like to explore and we are
21 exploring with JPMorgan generally, not just picking on Mr.
22 Iksil, that we think bear on that dispute, Your Honor.

23 One of those issues relates to another collateral
24 dispute that had some similarities that were important and
25 some differences that were important that also happened the

1 week of September 9th, 2008. And the other relates to
2 efforts that JPMorgan either did or did not take to try to
3 hedge or reduce its exposure to Lehman as a counterparty.
4 Those are the two areas and let me -- let me tell you how
5 this came into our radar screen.

6 When we learned about the whale controversy and we
7 were reading, in particular, that there were issues
8 regarding the pricing of derivatives positions within the
9 office of the CIO, we looked further and we -- and we
10 learned a couple of things, Your Honor.

11 We learned that there was -- that this infamous --
12 now infamous trader, Mr. Iksil, was the trader who was
13 responsible for two of the three largest trades that gave
14 rise to a \$273.3 million collateral dispute that happened on
15 September 9th, 2008.

16 September 9th, 2008 is a day of enormous
17 significance to us in this case, Your Honor. It is the day
18 when JPMorgan made its first of two demand for \$5 billion of
19 cash collateral. It is the day on which JPMorgan insisted
20 that Lehman sign overnight a series of brand new legal
21 agreements that affected a seed change in the parties
22 relationship. So it is a day of great consequence in this
23 case.

24 On the radar screen of the senior managers, and I
25 mean top level managers at JPMorgan, that day were not just

1 the \$5 billion demand for collateral that they made, but
2 also this \$273.3 million collateral dispute. I'm going to
3 get back to that in a moment, Your Honor.

4 The other issue, just to put it on the table, that
5 we learned about when we were reading headlines and reading
6 Mr. Diamond's congressional testimony and other public
7 statements about the CIO dispute is that what we had
8 previously thought was a sleepy, obscure corner of the bank
9 was actually very actively engaging in trading activity that
10 was designed, among other things, to try to hedge the bank's
11 exposure to crises and to counterparties that it thought
12 were in trouble like Lehman.

13 And, specifically, in testimony that we quote in
14 our papers, Your Honor, Mr. Diamond explains that the CIO's
15 trading strategy, among other things, was designed to
16 protect the bank in an event like a Lehman event. He called
17 out Lehman specifically.

18 So we asked the question, what did the CIO do in
19 order to hedge Lehman-related exposure. Now we had asked
20 this question before, Your Honor. We went back. We did our
21 diligence. The first thing we did was we looked at all of
22 our prior discovery requests. We said if we ask for this --
23 and we did. We identified them to Mr. Vizcarrondo in a
24 letter back in July of last year, a number of discovery
25 requests that specifically called for information regarding

1 the hedging activity related to Lehman, wherever it may be,
2 whatever trading or hedging activity JPMorgan engaged in
3 that were designed to reduce their exposure to Lehman.

4 Why is that relevant? On a macro level, whether
5 it's done to protect against all counterparty failures or
6 whether it's done specifically for Lehman, it goes directly
7 to whatever losses they claim they had against Lehman. It
8 goes to the exposure that they claim that they had to Lehman
9 for which they try to justify their collateral demands. It
10 goes frankly, Your Honor, to their state of mind, their
11 prospective on whether they thought that trying to support
12 Lehman, as they claim they were trying to do, or trying to
13 profit from Lehman, as we claim they were trying to do was
14 what really was going on the week of September 9th through
15 12th.

16 And that's something that comes up in the
17 testimony of all the senior executives. That's something
18 that we've been trying to explore for some time period, and
19 we have been met with, frankly, not very illuminating
20 answers in terms of what their actions were.

21 And they say, in fact, they have a macro hedge
22 that has nothing to do with Lehman. It is a general hedge
23 and we shouldn't be allowed to seek discovery of that hedge.
24 Well, their testimony on that is a little bit all over the
25 place, to be honest, Your Honor, and I would contrast the

1 testimony of the two co-CEOs of the investment bank, Steve
2 Black and Bill Winters, okay, who go in different directions
3 on this. And I think we're entitled, in terms of whether
4 they were or were not specifically hedging Lehman, and
5 whether the macro hedge was or was not designed to protect
6 them against Lehman.

7 We also don't know, Your Honor, we don't know
8 whether there was hedging activity at the CIO's office.
9 We've been asking this question. It's a fairly simple
10 question. We've been asking this question since July of
11 last year when we first contacted Wachtell and said, we've
12 looked at all our document requests. They call for this
13 information. We've looked at our documents that you
14 produced -- and that takes some time, Your Honor, because
15 it's a big production in this case -- and we don't see the
16 documents. We want you to go back and provide us with this
17 discovery, and we gave them, specifically, the discovery
18 that we expected to see and the document requests that we
19 asked of them.

20 They -- as late as September of last year, they
21 responded with a letter saying they are inquiring whether or
22 not the CIO's office was involved in the macro hedge. To
23 today's date, they still haven't taken a position as to
24 whether or not the CIO's office was responsible for the
25 macro hedge or not. Our question is actually broader than

1 that. Our question is, were they responsible for any
2 Lehman-related hedging activity, all of which we think is
3 appropriate for us to seek discovery of, and they haven't
4 given us an answer to that.

5 This is an unusual circumstance, Your Honor, where
6 someone is saying, don't take the deposition of this
7 individual, but they're not coming forward and saying either
8 he's someone without knowledge, as often is the case.
9 You've seen, Your Honor, people who try to take what they
10 call apex depositions, depositions of CEOs and chairman
11 where the people come forward to the court and they provide
12 an affidavit where the guy swears, I don't have any
13 information about that subject. We don't have that here.
14 We don't have an affidavit from Mr. Iksil.

15 This is not a situation where they say there are
16 other people who are prepared to cover that landscape, and
17 here they are and here's their knowledge. They haven't said
18 that, Your Honor. They haven't even told us at all whether
19 or not the CIO's office is engaged in that activity, which
20 seems from the public record they clearly are. So the idea
21 that we should refrain from taking this deposition because
22 they're going to supply us with that information otherwise
23 is, one, where they haven't been forthcoming enough to
24 achieve that burden.

25 Now, Your Honor, I want to talk about the other

1 subject that -- that drew us to focus on Mr. Iksil, which
2 are the trades themselves. The trades -- if I may, the
3 trades at issue here really boil down to three. They are
4 CDS trades on tranches of corporate debt. They are the same
5 types of trades that Mr. Iksil and others at the CIO were
6 engaged in in 2012 in the trades that lost the bank billions
7 of dollars and grabbed all the headlines.

8 We're not asking about 2012, Your Honor. We're
9 not fishing around generally. We're asking very
10 specifically about these trades. We believe that Mr. Iksil
11 is knowledgeable about the third trade, but two of the
12 three, the two that are by far the largest movers in terms
13 of value here were his trades. And he not only knew about
14 those trades, but he was the contact person that Lehman had
15 when this controversy arose.

16 This was -- until we learned about the CIO's
17 office, this was a subject of great curiosity to us because
18 what happened on September 9th, 2008 is JPMorgan's chief
19 risk officer, John Hogan, called Lehman's chief risk officer
20 and said, we have \$273.3 million difference in our position
21 versus your position. You must accept our position. You
22 must post collateral according to our marks.

23 And Lehman was insistent. The Lehman traders who
24 knew about these positions were absolutely convinced that
25 their marks were right and JPMorgan's were wrong, and they

1 cited trading evidence of the value of those positions. A
2 firm called Market and other data sources called Creditex
3 (ph) where all of the broker dealers on Wall Street rely on
4 those pricing fees for their daily mark to market of
5 collateral.

6 And those data sources completely agreed with
7 Lehman. Lehman even showed JPMorgan, you've got other
8 trades on the same reference obligations that agree with our
9 prices. So somewhere you guys have it wrong, will you admit
10 it. And for weeks Lehman was trying to resolve this dispute
11 because it was collateral that should have been coming to
12 Lehman. And for weeks they were not getting responses. The
13 person that Lehman was reaching out to principally as
14 contact on this at the trading level was Bruno Iksil.

15 And if you look at the documents that were cited
16 in our application, Your Honor, we didn't pluck his name out
17 of a hat. Exhibit C is a JPMorgan document, bottom of
18 Exhibit C has a very little -- very little spreadsheet on
19 the bottom. It has three trades in it, and two of those
20 trades, it says trader is Luis Baria (ph) and Bruno Iksil.
21 Mr. Iksil is senior to Mr. Baria as I understand it. The
22 second one, the trader is Luis Baria and Bruno Iksil. These
23 are JPMorgan's documents. Their records show these are his
24 trades. Okay.

25 We have one of the documents that we attached in

1 this case is a series of Bloomberg messages. You know,
2 traders communicate by instant message by their Bloomberg
3 screens. It's a series of Bloomberg messages between the
4 Lehman trader and Mr. Iksil. And they're going back and
5 forth on the question of this trade. And this is on the
6 date when this was ultimately resolved. There had been a
7 series. There had been phone calls. There had been
8 messages before this where the Lehman trader was trying to
9 get JPMorgan to own up to this issue and resolve it.

10 And it finally gets resolved only on the 10th, the
11 day after the collateral was posted. And on the 10th you
12 have Zyheid Hassan (ph) engaged in a long exchange with Mr.
13 Iksil who directs him to Mr. Baria and then an exchange with
14 Mr. Baria, and within minutes you'll see, Your Honor, that
15 JPMorgan admits that its marks were wrong and the collateral
16 has to go back.

17 And what we don't know and what we would like to
18 know is, were those marks wrong because the trading
19 positions were inappropriately marked because they were
20 valued in the CIO's favor as seemed to be the practice in
21 2012 that got JPMorgan in a heap of trouble. And we have
22 good reason to suspect that because JPMorgan's own task
23 force report concludes that there was rampant mismarking,
24 mismarking by a senior trader. We would assume that they're
25 referring to Mr. Iksil in that. And that it was done

1 because he has a different view of what is fair value than
2 what the accounting standards are or what the mark to market
3 standards are on Wall Street. So we have good reason to ask
4 that question.

5 JPMorgan says there are no problems with the
6 marks. The trading marks were fine. This was an
7 operational glitch, essentially, is what they're saying. I
8 don't think, Your Honor, that we have to take JPMorgan's
9 word for it. I think we're entitled to explore that
10 question. But in either event, it's relevant to this case,
11 and in either event, Mr. Iksil is a knowledgeable person on
12 that subject.

13 If it's true that, as they say, the marks were
14 right in the trader's book and they were wrong in the
15 collateral manager's book, then Mr. Iksil is going to help
16 us establish that. Mr. Iksil would presumably testify that
17 he had the marks right in his book and that his book agreed
18 with Lehman's book, and that JPMorgan's collateral managers
19 had it all wrong and they were demand collateral that they
20 didn't have a right to demand on September 9th. That sounds
21 familiar to our story, Your Honor, demanding collateral that
22 they weren't entitled to based on their view of risk
23 exposures that Lehman didn't agree with.

24 Now if it's -- of course, as we also think is a
25 possibility here, Your Honor, that the positions were wrong,

1 the underlying positions were wrong, just like they were
2 wrong in 2012, and I think we're clearly entitled to see
3 that as well.

4 Now on the 9th with no diligence, okay, no effort
5 to try to resolve the difference in these trades, Mr. Hogan
6 puts his demand into Lehman and Lehman, having no choice,
7 posts the collateral.

8 Now this episode is important for a couple of
9 reasons, Your Honor. Number one, it demonstrates, of
10 course, the power that JPMorgan had over Lehman. Okay.
11 Number two, it shows that there is a process on Wall Street
12 for demanding collateral, particularly with respect to
13 derivative transactions. Okay. It wasn't identified at the
14 time by JPMorgan, okay, but JPMorgan says in hindsight, the
15 reason why we needed the first \$5 billion, the first 5
16 billion chunk of collateral is because, among other things,
17 we had risk exposure with respect to derivative
18 transactions. Okay.

19 Our position, Your Honor, is it's entirely
20 inappropriate for them to wake up one day in the middle of
21 some 75,000 derivative trades and say, we want additional
22 collateral on top of the collateral that is posted every
23 single day pursuant to the parties' agreements. There's a
24 well-functioning machine on Wall Street for handling that
25 issue. That's the ISDA Master Agreements and the credit

1 support annexes under them, and they specify how collateral
2 is to pass on a daily basis based on the marks of the
3 underlying positions.

4 And when that machine has a glitch in it, when the
5 parties' positions disagree, there is a well-accepted
6 practice for resolving that. They get together. They
7 compare their marks, and if they still can't resolve it,
8 they go to a third party and ask the third party to value
9 it. That's not just my view of how it works. That's what
10 John Hogan testified to in his deposition that that is, in
11 fact, how it works.

12 So our point is let's contrast how the system was
13 supposed to work, how the system worked with respect to the
14 \$273.3 collateral dispute. There is a process. There are
15 marks. Lehman gets an opportunity to say whether or not its
16 marks or JPMorgan's marks are right, and then the collateral
17 passes on that basis. Okay. They jump that process on
18 September 9th and demanded the 273.3.

19 But even there, Lehman had an opportunity the next
20 day to ramp up the pressure and go back to them and say,
21 look, we know we had to give you the collateral because we
22 had no choice, but here's where you're wrong. Please
23 clarify this. And Mr. Iksil ultimately agreed with us; that
24 we were right on the position that the collateral came back.
25 That's not an opportunity that they afforded us with respect

1 to the \$8.6 billion of cash that they claim they needed that
2 there -- that they have kept for four-and-a-half-years and
3 that they're now trying to justify in hindsight with
4 inflated claims for derivatives exposure and for clearing
5 exposure.

6 THE COURT: Mr. Rossman, you're -- you're kind of
7 making your opening argument for a trial that we're not yet
8 having in the context of a discovery dispute that wouldn't
9 exist if this were a witness who worked domestically for
10 JPMorgan or was still employed by JPMorgan.

11 And so I'm -- I don't want to get in the way of
12 your rhetoric, but I think we're getting a little beyond the
13 focus of what we're talking about. I'm -- I've read the
14 papers and the declarations. I'm familiar with the issue.
15 And I would like this not to be an opportunity for
16 grandstanding.

17 MR. ROSSMAN: Well, Your Honor, I -- I don't mean
18 to get too carried away with my arguments. I think you can
19 tell that I feel strongly about what happened in this case,
20 and the creditors' committee and the estate feels strongly
21 about this case. But let me get to the discovery issue.

22 THE COURT: I understand. This is a -- this is an
23 incredibly narrow question which should not become an
24 opportunity to argue the merits of the case. The question
25 is focused: To what extent do you actually need the

1 deposition of Bruno Iksil to obtain evidence you don't
2 already have.

3 MR. ROSSMAN: We don't have any evidence, Your
4 Honor. Okay.

5 THE COURT: You had a whole bunch of material that
6 you attached to your -- to declarations suggesting that you
7 have ample evidence already regarding the \$273.3 million
8 dispute with regard to variation margin that by very
9 definition is not the subject matter of the litigation.

10 MR. ROSSMAN: Your Honor, the evidence is at
11 different levels and it's worth understanding it. They have
12 given us discovery at the investment banking level. Okay.
13 So like chief risk officer Mr. Hogan, for example, the folks
14 who were making the demand that the 273.3 be paid that day.
15 Okay. So they've searched the email inboxes of those folks
16 and we have some documents from that. Okay.

17 We have our own files and we've searched those.

18 But as far as I understand, they have not searched
19 the files yet, prior to our asking JPMorgan, for the inboxes
20 and the documents from the CIO's office. Okay. That's the
21 area we haven't seen. We have not seen at the trading
22 level, we have not seen at the CIO's office either
23 information about this \$273.3 million margin dispute or
24 information, other than bits and pieces that by happenstance
25 have to be -- happen to have been in our documents, okay,

1 primarily, nor have we seen what, if anything, the CIO is
2 doing to hedge Lehman-related exposure.

3 And, Your Honor, I do want to take a moment on the
4 grandstanding point. I assume you're referring to my -- my
5 making my case here. And I -- forgive me if I feel strongly
6 about it, and I -- and I do and I want to make it.

7 They accused me of a different kind of
8 grandstanding. Okay. They accused all of us of a different
9 kind of grandstanding, which is to try to make public
10 statements about this. If Your Honor looks at the record,
11 and I'm sure Your Honor has in these motions, we didn't
12 start back in July of 2012 with a motion. We didn't start
13 with a press conference. We --

14 THE COURT: I saw you --

15 MR. ROSSMAN: -- didn't file any --

16 THE COURT: I saw that you sent a letter to Mr.
17 Vizcarrondo requesting certain discovery.

18 MR. ROSSMAN: Well, there's more than a letter.
19 There were something on the order of 30 back and forth
20 misses, and we had enumerable lengthy meet and confers on
21 this issue. We tried to get it from them voluntarily.

22 THE COURT: But let's try to focus in on the real
23 discovery dispute. To what extent do you have an ongoing
24 discovery effort with JPMorgan concerning a turnover of
25 documents from the CIO and the deposition of current

1 JPMorgan employees, rather than going after Mr. Iksil, a
2 non-party witness in France? In other words, how does this
3 targeted discovery fit into the overall discovery of this
4 issue which, quite candidly, I view as not central to the
5 case?

6 MR. ROSSMAN: Well, Your Honor, I want to take up
7 both of those. Okay. We've asked for extremely targeted
8 discovery. We've asked for a 30(b)(6), and we've asked for
9 four individuals who appear to us to be the four most
10 knowledgeable individuals on the subject. Okay. I
11 understand that two of them are JPMorgan employees. Two of
12 them are not JPMorgan employees. I also understand from
13 Wachtell that all of them are abroad and are likely to be
14 deposed abroad.

15 So the idea that there's some enormous burden
16 associated with having to take depositions abroad is not one
17 that I think has any traction in this case at all. Okay.

18 THE COURT: Well, the distinction here, and the
19 only reason that we're having this argument is that you're
20 seeking leave of court to take a deposition pursuant to the
21 Hague Convention, which you wouldn't need to do, presumably,
22 if you were dealing with a JPMorgan employee. JPMorgan
23 would simply produce those witnesses or fly them in.

24 MR. ROSSMAN: That's right, Your Honor. And they
25 have said for the two that are JPMorgan employees, they've

1 said, we don't -- we want to talk to you about taking
2 depositions at all. Let's give us -- you know, let us give
3 you the documents first. But those two we represent and, if
4 need be we'll produce then. And the third, who is not a
5 JPMorgan employee, they've said they will also represent
6 him. So they'll make him available, if necessary.

7 What they have said to us is they don't represent
8 Mr. Iksil. They don't represent Mr. Iksil. He's got
9 separate counsel. And if we want to take his deposition,
10 we've got to serve him in France. That's what they told us
11 to do months ago.

12 THE COURT: Have you been in touch with Mr.
13 Iksil's separate counsel?

14 MR. ROSSMAN: We -- we don't even know who Mr.
15 Iksil's separate counsel is. It hasn't been identified to
16 us. Okay. So we've tried to locate him. We think we
17 understand where we can serve him. And we're asking the
18 Court's permission to serve a subpoena on a witness who is
19 knowledgeable.

20 Now I looked at the federal rules up and down.
21 I'm not aware that there's an infamy exception to your
22 obligation to provide testimony under Rule 26. Now there
23 may be other people who are knowledgeable, but that's true
24 with respect to this case generally. JPMorgan hasn't just
25 accepted taking one person's deposition on a particular

1 subject. They've taken 144 depositions and still counting
2 in this case and many of -- several of them multiple times
3 until they're satisfied.

4 So it's appropriate for us to seek testimony from
5 all people who are knowledgeable, and it's appropriate for
6 us to select the individuals that we want testimony from.
7 We -- we are confident that Mr. Iksil is as knowledgeable
8 about these subjects as the other three people that we've
9 identified, or more knowledgeable since they're his trades,
10 and JPMorgan hasn't done anything, anything in the eight
11 months that we've been negotiating with them over this
12 discovery to show us documents or provide us with affidavits
13 to convince us otherwise. They've had ample opportunity to
14 do that, Your Honor.

15 And I don't want to accuse them of foot-dragging,
16 but it's certainly a process that's taking a very long time
17 and in their opposition they have not come forward with any
18 evidence. They're simply taking pot shots at our evidence.
19 They still haven't squarely answered the question of whether
20 the CIO's office was engaged in Lehman-related hedging
21 activity. They haven't answered the question of whether
22 there are other people who are more knowledgeable than Mr.
23 Iksil on the 273. I don't think that there could be because
24 he is directly relevant.

25 And I want to just answer one more thing that Your

1 Honor raised, which is very important here, okay, which is
2 what is this dispute, this \$273 million dispute that
3 happened on the 9th, was resolved in Lehman's favor on the
4 10th, what does that have to do with our overall case?

5 If you look, Your Honor, there is -- one of the
6 documents that we produced in this case was -- I'll get it
7 in a moment -- was an email from John Hogan, and Mr. Hogan's
8 email -- I'll find it in a second. Mr. Hogan's email, which
9 is Exhibit G in our motion papers, was sent the afternoon of
10 September 9th, and this is between the time, okay, after --
11 after the \$5 billion demand was made and the \$3 million was
12 posted that day, and an additional \$600 million was posted
13 the next two days, Your Honor. It was between that time
14 frame, so this is a crucial time period.

15 JPMorgan is down in Washington, D.C. They had
16 meetings that morning with top government officials. They
17 made their demand and, of course, that night they make their
18 demand for the new agreements. Mr. Hogan writing to Steve
19 Black, co-chairman of the investment bank, Barry Zubrow
20 (ph), who is the chief risk officer globally of the bank,
21 okay, has four items in his email.

22 The top two priority items are, get us the \$3
23 billion in cash that we're supposed to get based on the
24 collateral demand that we just made, and I spoke to Chris
25 O'Mera (ph), who is Lehman's chief risk officer, and told

1 him that we needed to clean up the margin dispute today.
2 That was the \$273.3 million. They insisted on that money.
3 That was their M.O. for doing business. Get the cash first,
4 worry about justifying it later.

5 And once last thing that I want to make sure Your
6 Honor understands. Our point -- this is a point we're going
7 to make in our case in why this discovery is relevant -- is
8 that Lehman fully collateralized JPMorgan, fully
9 collateralized for all of the derivative-related exposures
10 through and including close of business on Friday, September
11 12th, under these ISDAs (sic). If they had any concern at
12 all that there was some trade or transaction where there
13 were differences in value between Lehman values and JPMorgan
14 and JPMorgan thought it was in the right, it policed that
15 vigilantly and made sure that it had every last dollar.

16 So all of a sudden to slap an additional billions
17 of dollars of exposures, which we think are not real
18 exposures, on top of that demand collateral and then keep it
19 is the essence of what we think is wrong with JPMorgan's
20 conduct here and that's why this episode is important.

21 Your Honor, I'll just say in conclusion, we are
22 anxious to get our hands on the documents that we've been
23 asking for for a long time. We're anxious to take the
24 depositions of JPMorgan witnesses who JPMorgan can produce.
25 At this stage all we're asking you to do is to authorize us

1 to issue a subpoena.

2 THE COURT: I understand.

3 MR. ROSSMAN: Thank you, Your Honor.

4 THE COURT: Let's hear from JPMorgan.

5 MR. VIZCARRONDO: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. VIZCARRONDO: If Lehman is genuinely
8 interested in getting more information about this margin
9 dispute, which is not alleged in the complaint, they note
10 about in the outset of discovery. They've, in fact,
11 questioned some witnesses about it.

12 And the documents that they are relying on for
13 this application are documents they've had for more than two
14 years, including documents identifying Mr. Iksil,
15 identifying -- and -- and the very documents they're relying
16 on show that Mr. Iksil says, I don't know about this -- this
17 trade. I don't know about this dispute. It's not me. But
18 I'll put you in touch with people who do. He did, and it
19 was quickly resolved in Lehman's favor.

20 But they've had those documents for two years.
21 They've known about Iksil's whatever involvement, non-
22 involvement he -- he had. They've known about the other
23 people in CIO and whatever involvement they had. The only -
24 - the only thing that's changed in the last two years is
25 that Iksil is now the London Whale, so now they want to go

1 to France to question Mr. -- Mr. Iksil.

2 If they are genuinely interested in understanding
3 the reason for JPMorgan's, I'll admit, error, which
4 JPMorgan, you know, conceded and -- and cured, you know,
5 rather -- rather quickly, if they want to take -- take
6 further testimony to understand it, I think it's explained
7 in the documents they have, but if they want to, we can
8 produce for them a JPMorgan employee who is in New York, one
9 of the person's who they've -- who they've asked to depose.
10 We can produce them as a -- as a JPMorgan -- as a 30(b)(6)
11 witness or testify as to his personal knowledge.

12 And then after that deposition if there's a
13 genuine further issue as to Mr. Iksil, then perhaps the
14 Court can revisit it. But there's no showing on the
15 application that they've made now that there's any reason or
16 basis to have us trace to France to take -- take a
17 deposition from Mr. Iksil.

18 I agree that -- that -- well, the standard here is
19 essentially the same as the standard for any -- any
20 discovery issue. It has to -- if there's a dispute, then
21 they do have some burden of showing that what they're asking
22 for is -- is seeking relevant evidence or evidence that's
23 likely to -- to lead to relevant evidence. They haven't
24 shown that in these papers. They haven't -- again, the very
25 documents that they rely on, if anything, show Mr. Iksil

1 saying -- and the Lehman person accepting the fact that Mr.
2 Iksil did not have any involvement in these trades. He's
3 not the person, and the person who did have involvement got
4 back to them and it was resolved promptly.

5 And as to the -- is this hedge, it's macro hedge,
6 again, there's absolutely no -- there's absolutely no --
7 nothing in their papers at all connecting Mr. Iksil to any
8 macro hedge that JPMorgan may have -- may have put on in
9 order not to -- as, again, it's plain from the public record
10 -- not to protect against any risks specific to Lehman, but
11 against a market collapse or substantially adverse reaction
12 to some unexpected disaster, such as a Lehman collapse, a
13 Merrill Lynch collapse, an AIG collapse, a tsunami, that was
14 another example that was given.

15 Again, nothing to do, we -- we submit, to any
16 issue that's -- that's genuinely in this case, but they've
17 made no showing that Mr. Iksil has any relationship to it
18 all.

19 So we ask Your Honor to deny the application. We
20 have -- we've had negotiations with them for seven or eight
21 months, as Mr. Rossman has said, about document production.
22 I'm not going to go with the -- with the who shot John on
23 it. I will say there have been substantial gaps in time
24 between the proposal that we would make to try to reach an
25 agreement as to the proper scope of document discovery and

1 then there would be gaps of a month, in some cases two
2 months before they got back to us.

3 There was finally an agreement last month or early
4 this month. We have started to make discovery, document
5 discovery to them. We expect to complete it before the end
6 of the month. We believe that those documents will show
7 them that there's no basis for taking Mr. Iksil's
8 deposition. But, again, if -- if there's any basis to take
9 a deposition at this point, we will arrange for a 30(b)(6)
10 deposition or a deposition of -- of this one person who is
11 in New York so at least we can try to -- try to approach
12 this on some reasonable basis.

13 THE COURT: Mr. Vizcarrondo, do you believe that
14 the discovery requested of Mr. Iksil is being pursued in bad
15 faith because of the notoriety that surrounds this
16 individual?

17 MR. VIZCARRONDO: I'm not going to use the word,
18 bad faith. I think it's apparent that that's a motivation
19 of theirs. They -- they don't deny it. They admit it in
20 their reply papers. Their only response was that it's not a
21 violation of Rule 11 for them to seek discovery for that
22 person -- for that purpose. I commend them for making an
23 application that does not violate Rule 11.

24 But I -- I think they concede that that is -- that
25 that is a purpose in their seeking this -- this discovery.

1 MR. ROSSMAN: We disagree with that --

2 THE COURT: I'm -- I'm not --

3 MR. ROSSMAN: -- vehemently, Your Honor.

4 THE COURT: -- speaking to you quite yet. I --
5 you can have an opportunity to respond.

6 And assuming for the sake of discussion that Mr.
7 Iksil were an otherwise anonymous employee that no longer
8 worked for JPMorgan, but had the very same functions within
9 the chief investment office unit, would you be fighting this
10 hard to prevent this discovery because the irony here is
11 that the very visible and public fight over what really is
12 an otherwise ordinary deposition in a massive case has,
13 frankly, put unwanted attention on this very subject matter.

14 So if Mr. Iksil were a completely anonymous former
15 employee would you be fighting in the same way?

16 MR. VIZCARRONDO: Yes, Your Honor.

17 THE COURT: Why?

18 MR. VIZCARRONDO: Because we believe this has
19 nothing to do with this case. Yes. We believe it has
20 absolutely nothing to do with this case and we would oppose
21 taking -- taking Mr. Iksil's deposition -- look, I can't --
22 I cannot -- I cannot ignore the fact that Mr. Iksil is not a
23 anonymous employee. He's an employee, a former employee
24 that, obviously, there's been much public discussion about.
25 It's no secret that he separated from JPMorgan on not

1 amicable terms. I -- I think it's fair to say -- again, I
2 don't want to get into, you know, too disparaging statements
3 about what their motives may be.

4 But I do suspect that part of it is to try to see
5 if Mr. Iksil will make in his deposition disparaging
6 comments generally about JPMorgan, about Mr. Diamond, about
7 whoever that somehow or other will then wind up in the
8 public record. We have concern about that.

9 THE COURT: Okay.

10 Mr. Rossman, did you want to defend your honor?

11 MR. ROSSMAN: I certainly would, Your Honor.

12 I'm going to go out of order.

13 First, I want to deny with every bone in my body
14 the idea that we're doing this in any way in bad faith or
15 with a gear --

16 THE COURT: I didn't accuse you of doing anything
17 in bad faith. I --

18 MR. ROSSMAN: I understand.

19 THE COURT: -- was asking Mr. Vizcarrondo if that
20 was his view.

21 MR. ROSSMAN: Oh, Your Honor, I didn't take you as
22 accusing me.

23 MR. VIZCARRONDO: And I did not accuse Mr. Rossman
24 of bad faith.

25 MR. ROSSMAN: I did not accuse -- I did not take

1 you as accusing me, Your Honor. I -- I did not take Mr.
2 Vizcarrondo as vindicating me. Maybe I'll -- maybe I'll put
3 it that way.

4 THE COURT: Do you feel the need to vindicate
5 yourself now?

6 MR. ROSSMAN: I do, Your Honor, because this is
7 important. Okay. We cite a Second Circuit case and we cite
8 it for a simple legal proposition, okay, which is, of
9 course, you know, core proceedings are supposed to take
10 place in a public place. And there is nothing wrong as long
11 -- as you're filing something that's consistent with Rule
12 11, there is nothing wrong with taking a position that may
13 bring public scrutiny on your adversary. Okay.

14 That wasn't our purpose here. Okay. If that were
15 our purpose here, then eight or nine months ago we would
16 have started with a motion. If they had been able to
17 control Mr. Iksil or been able to persuade his counsel to
18 appear for deposition, there wouldn't be anyone in the
19 gallery. Okay. We wouldn't be here in court. We would
20 take that deposition.

21 And if there were concerns that Mr. Vizcarrondo
22 had about the contents of that deposition, if there is
23 anything there that's truly either a secret or confidential
24 information or that they thought fit within the terms of our
25 protective order, then they would have had the right to

1 designate it as such, and it couldn't be public unless and
2 until Your Honor decided to unseal it.

3 Now, Your Honor, in a case where they have spent
4 years bashing Lehman and bashing Lehman personnel, you know,
5 at every opportunity, throwing out phrases like, goat pooh,
6 even if they're non-sequiturs, Your Honor, okay, where they
7 went out of their way to file on the public record the
8 declarations of New York Fed President Timothy Geithner and
9 former Secretary of the Treasury Henry Paulson. They filed
10 those unsealed, we didn't. Okay. And they have been using
11 that, citing them in their papers so that they can feed, you
12 know, frankly, those papers to the members of the media so
13 that they can get their story out. The idea that they would
14 even suggest, even suggest that we're doing this, you know,
15 for the publicity of it is really pretty outrageous.

16 Now I think Your Honor put your finger right on
17 the right issue here, which is if this weren't Bruno Iksil,
18 if this were some, you know, unknown employee, whether he
19 was a former employee represented by them or not represented
20 by them, there would be no fuss, no muss. We would take the
21 deposition and we would move on with life.

22 They're taking the stand here, frankly, creating
23 the publicity by taking the stand. If you'll remember, Your
24 Honor, I -- I raised this issue in one of our last
25 conferences and was very surprised to learn that they were

1 opposing it. I didn't think they would. Okay. But they
2 have made the publicity by opposing it. I don't know what
3 point they're trying to make.

4 What I -- the point that I want to make, Your
5 Honor, is we think he clearly does have relevant testimony.
6 He doesn't get shielded because he's a person of public
7 interest. Okay. We've had testimony of multiple CEOs and
8 chairmen of major corporations in this case. High level
9 government officials have given testimony. There have been
10 a lot of folks who have seen this case as important enough
11 to be willing to provide their testimony. Mr. Iksil should
12 not be shielded from that, okay, merely because he's created
13 some other problem for JPMorgan. We want to ask him
14 questions. I have not seen a showing that Mr. Iksil is not
15 knowledgeable.

16 One point that I want to make on that, Your Honor,
17 is whether these are Mr. Iksil's trades, as JPMorgan's own
18 spreadsheet shows, or they were someone else within Mr.
19 Iksil's operation. My understanding is Mr. Baria is a more
20 junior trader who reports to and is supervised by Mr. Iksil.
21 That's why Mr. Iksil contacted him to resolve this problem.
22 Either way, Mr. Iksil is a person knowledgeable about these
23 subjects. He's the person standing between Lehman and the
24 resolution of this dispute.

25 So in the ordinary circumstances, there would be

1 no question at all that we would take this deposition. So I
2 think, essentially, what JPMorgan is asking Your Honor to do
3 is to find that there's a London Whale exception to the
4 Federal Rules of Civil Procedure.

5 I have not heard that he is too busy. I have not
6 heard that he is incarcerated. I have not heard that there
7 is any reason why he is unable to give testimony. And in a
8 case where JPMorgan has literally circled the globe seeking
9 every last bit of testimony that they can try to get, third
10 parties and former Lehman employees to assist them in their
11 case, the idea that this one additional deposition is, you
12 know, the deposition that broke the camel's back and the one
13 that we shouldn't take is fairly absurd, Your Honor.

14 We want to take this deposition. If the
15 deposition has information in it that they think, frankly,
16 should be subject to a protective order, they have their
17 remedies under the protective order. We want to ask the
18 questions, Your Honor.

19 And the last thing I'll say is I still haven't
20 heard an answer on the question of what the CIO's office was
21 doing with respect to hedging activity. And I would think
22 by now they probably have a pretty decent view of what the
23 CIA -- CIO's office was up to.

24 Thank you, Your Honor.

25 THE COURT: That last letter is an important

1 distinction. It's not the CIA.

2 (Laughter)

3 THE COURT: This is actually a completely routine
4 discovery dispute that happens to have attracted a great
5 deal of attention because of the visibility of the proposed
6 witness and because this proposed witness no longer works
7 for JPMorgan and resides in France, thereby making it
8 necessary for the plaintiffs to come to court and seek an
9 ordinary course order under the Hague Convention to compel
10 this witness's appearance at a deposition to take place in
11 France.

12 I don't have to tell the experienced lawyers in
13 the room that the Federal Rules of Civil Procedure are
14 extraordinarily liberal when it comes to discovery, nor do I
15 have to remind them that this is the first occasion, at
16 least to my recollection, in which there has been actual
17 litigation over whether or not a particular deposition
18 should be taken. There have been some discovery disputes in
19 the case leading up to this, but those disputes have been,
20 for the most part, resolved by the agreement of counsel
21 following consultation with the Court or have been the
22 subject of other motion practice. But this is the first
23 instance, to my recollection, in which there has been issue
24 joined with respect to whether or not a deposition should be
25 taken.

1 I hate to say this, but I rather suspect that the
2 evidence to be offered by Mr. Iksil will pale in comparison
3 to the arguments that have been made as to whether or not
4 the deposition should be taken at all. This case has been
5 progressing for a number of years now through the discovery
6 phase. The parties themselves are deeply steeped in the
7 facts of the case and the theories that they will be
8 pursuing either at the time of dispositive motions or trial.

9 I consider it inappropriate, except in a clear
10 case of abuse, to cut off discovery of a witness that has
11 fingerprints all over a particular transaction. And in this
12 instance, Mr. Iksil's fingerprints are on the \$273.3 million
13 transaction in question that took place on a date of some
14 significance to the case.

15 In saying that, I note that the \$273.3 million
16 transaction is not really what this case is about at all.
17 But it's not for me to define how the plaintiffs should
18 endeavor to prove their case, nor is it for me at this point
19 to make the judgment that this deposition is unnecessary.

20 It may turn out to be unnecessary after it's
21 taken. The testimony may prove to be worthless, but it
22 could also turn out that the testimony is of some
23 incremental value or may lead to the discovery of other
24 evidence that may be admissible.

25 So the request of the plaintiffs is granted.

1 MR. ROSSMAN: Thank you, Your Honor.

2 THE COURT: We're adjourned.

3 MR. VIZCARRONDO: Thank you, Your Honor.

4 (Whereupon, proceedings were concluded at 11:53 a.m.)

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber

CERT*D -397

Veritext

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Date: March 14, 2013